

SERIAL NO: 10/718,895
CONFIRM. NO: 1668
APPLICANT: Olga Maria Schone
Page 2

I. The Present Office Action Should Not have been made Final.

The prior art rejections made in the Examiner's first action dated June 1, 2004 have been maintained in the present action. In its response to the first action, Applicant made no substantive amendments to the claims, as the prior art of record failed to disclose a critical feature of the original claims—**a color image identifying each medicine listed in the personalized medication card.**

In each Office Action, the examiner states that both Coe and Nellhaus teach the concept of using color images to identify respective medicine pills. *Neither reference in fact teaches this concept.* In the present action, the examiner further states that, in any event, the published U.S. Patent Application to Valley discloses an identifying color image of medicine printed on a label; while the '702 Patent to Mayfield and the '767 Patent to Lambert disclose a color-coded method of identifying different types of medicines (collectively, "New Art").

The examiner's application of the New Art is a new ground of rejection; a new ground which was not necessitated by a prior claim amendment by the Applicant. As such, the *finality* of the present action should be withdrawn and the New Art properly applied in a subsequent office action.

II. No Reference of Record Describes the Concept of Providing a Color Image of the Medicine.

In the present action, the examiner notes that Coe describes stickers containing *graphic pictures* of medicine, and that Nellhaus describes sticker stamps which include *pictorial representations* of the particular medicine. While this may be true, neither reference states that the pictures or pictorial representations are **color images** of the actual medicine. If the examiner's position is that "pictures" and "pictorial representations"

are necessarily *color images*, then this position is illogical and clearly incorrect. In the context of the present invention, color is a critical feature which allows accurate identification of medicines to be taken by users who are often elderly and have limited visual and/or mental capacity. *The examiner has failed to cite any disclosure in this art of the concept of using a color image to distinguish and identify various medicines listed in a personalized medication card.*

Likewise, the New Art cited in the present office action makes no mention of a medication card including color images of medicine—despite the examiner's statement that this is a "very well known method of practice in the art." To the contrary, the examiner has failed to locate and apply a single reference which discloses pictorial systems utilizing color for identifying different types of medicine. The Valley reference refers only to printing custom *prescription labels* in color.

III. Color as a Patentably Distinct Feature

In the present action, the examiner's blanket statement that color is not considered to be a patentably distinct feature is plainly incorrect. The use of a *color image* on a personalized medication card in the context of the present invention offers a greatly improved means for individuals (often elderly people with limited sight and/or mental capacity) to readily identify and distinguish various medicines. The use of color in this context has clear utility.

For all these reasons discussed above, Applicant submits that all of the claims in the case are now in condition for allowance. Such action is therefore respectfully requested at an early date. If the Examiner believes that issues remain for discussion, he is invited to contact the undersigned at the telephone number indicated below.

SERIAL NO: 10/718,895
CONFIRM. NO: 1668
APPLICANT: Olga Maria Schone
Page 4

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